

FILED

SEP 30 1993

HOWARD HANSON  
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By J Steele, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MARIN

1 MICHAEL WALTON  
2 P.O. Box 751  
3 San Anselmo, CA 94979  
4 (415) 456-7920  
5 In Propria Persona

8 CHURCH OF SCIENTOLOGY )  
9 INTERNATIONAL, a California )  
10 not-for-profit religious )  
11 corporation, )  
12 )  
13 Plaintiff, )  
14 )  
15 vs. )  
16 )  
17 )  
18 GERALD ARMSTRONG; MICHAEL )  
19 WALTON; THE GERALD ARMSTRONG )  
20 CORPORATION, a California for )  
21 profit corporation; DOES 1 )  
22 through 100, inclusive, )  
23 )  
24 Defendants. )  
25 )

CASE NO. 157 680

NOTICE OF HEARING ON DEMURRER  
TO COMPLAINT AND MOTION TO  
STRIKE; DEMURRER TO COMPLAINT;  
MOTION TO STRIKE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF

DATE: November 19, 1993  
TIME: 9:00 A.M.  
PLACE: Department 1  
TRIAL DATE: NONE SET  
DISCOVERY/MOTION LIMIT: NONE

26 TO PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL AND TO ITS  
27 ATTORNEYS OF RECORD: PLEASE TAKE NOTICE that the Demurrer of  
28 defendant MICHAEL WALTON (hereinafter "WALTON") filed herewith is  
29 set for hearing on November 19, 1993 at 9:00 A.M., or as soon  
30 thereafter as the matter may be heard, in Department "1" of the  
31 Superior Court of the State of California, for the County of Marin,  
32 located at the Hall of Justice, Civic Center in San Rafael,  
33 California. In the alternative to sustaining the Demurrer,  
34 defendant will move to strike plaintiff's entire complaint as a  
35 sham pleading, filed in contravention to an existing court order  
36 and not filed in conformity with the laws of this state and that

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HUB LAW OFFICES

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34 defendant will move to strike plaintiff's entire complaint as a  
35 sham pleading, filed in contravention to an existing court order  
36 and not filed in conformity with the laws of this state and that

1 additionally, the complaint attempts a hoax upon the court and is  
2 violative of public policy in nature.

3 This Demurrer will be based upon this Notice, Demurrer to  
4 Complaint, Motion to Strike and the Memorandum of Points and  
5 Authorities submitted herewith, on the papers and records on file  
6 herein, and on such oral and documentary evidence as may be  
7 presented at the hearing including, but not limited to, any  
8 evidence of which the court may properly take judicial notice.

9 Dated: September 30, 1993 \_\_\_\_\_

10 Michael Walton

11 **DEMURRER**

12 1. Defendant WALTON demurs to the First Cause of Action of  
13 the Complaint on the grounds that the pleading is uncertain,  
14 ambiguous and unintelligible.

15 2. Defendant WALTON demurs to the First Cause of Action of  
16 the Complaint on the grounds that it fails to state a cause of  
17 action against this defendant.

18 3. Defendant WALTON demurs to the Second Cause of Action of  
19 the Complaint on the grounds as stated in paragraphs 1 and 2 hereof  
20 and refer to and incorporate those Paragraphs herein for stating  
21 said grounds.

22 5. Defendant WALTON demurs to the Third Cause of Action of  
23 the Complaint on the grounds as stated in paragraphs 1 and 2 hereof  
24 and refer to and incorporate those Paragraphs herein for stating  
25 said grounds.





1 Plaintiff does make reference to two other actions pending in Los  
2 Angeles Superior Court, (both entitled Church of Scientology  
3 International v. Armstrong with respective case numbers LASC#  
4 052395 & LASC# BC 084642). Plaintiff indicates in Paragraph 3 that  
5 both cases are "for breaches occurring between" July 1991 and May  
6 1992 and between August 1991 and June 1993, respectively. The  
7 collective demand for damages in the actions is \$1,800,000.  
8 Presumably, it is the same \$1,800,000 which plaintiff has alleged  
9 as damages in the Los Angeles Superior Court actions that plaintiff  
10 claims due in the instant action.

11 Plaintiff at Paragraph 22 states, "Beginning in February 1990,  
12 and continuing unabated until the present, Armstrong has breached  
13 the Agreement wilfully and repeatedly, ..." However, plaintiff  
14 fails to indicate when, where or how defendant Armstrong has  
15 breached the Agreement. There are no allegations of specific  
16 breaches of the agreement. It is impossible to determine what  
17 defendant Armstrong allegedly did or did not do that gave rise to  
18 plaintiff's claims for damages. It is equally impossible for  
19 defendant Walton to know what it is that plaintiff alleges was  
20 accomplished in furtherance of a conspiracy. Without knowing what  
21 it is that Armstrong is alleged to have done, Walton is put in the  
22 position of having to GUESS how to defend himself.

23 By dividing \$1,800,000 by \$50,000, one might GUESS that  
24 plaintiff is somewhere alleging that Armstrong breached the  
25 Agreement 36 times. However, that somewhere does not show up in the  
26 pleadings. Perhaps plaintiff has alleged the breaches in the Los

1 Angeles Superior Court pleadings...however, that is only a GUESS.  
2 Even the pleaded time frame of the alleged breaches is uncertain  
3 and ambiguous. Plaintiff claims to have filed two actions against  
4 Armstrong in Los Angeles claiming Armstrong breached the Agreement  
5 "between July 1991 and May 1992" and "between August 1991 and June  
6 1993", respectively. In the instant action, plaintiff claims that  
7 "In or about February, 1990, Armstrong began to take a series of  
8 actions which directly violated provisions of the  
9 Agreement."(Paragraph 2). Plaintiff then fails completely to  
10 provide any further information regarding what actions Armstrong  
11 took that plaintiff considered was in violation of the Agreement in  
12 any of the three different time frames. This is true no matter what  
13 set of alleged dates one uses.

14 This defendant has been named in all three causes of action  
15 included in plaintiff's complaint. Plaintiff alleges that in August  
16 1990, Walton and Armstrong "conspired between themselves to hinder,  
17 delay and defraud plaintiff in the collection of its damages, and  
18 to render Armstrong unable to pay any and all damages to plaintiff  
19 which Armstrong had incurred (sic) and intended to and did incur in  
20 violation of the Agreement." (Paragraph 41). Again, plaintiff  
21 fails to provide any information of any kind regarding the nature  
22 of the damages "which Armstrong had incurred(sic) and intended to  
23 and did incur..." One may GUESS that plaintiff did not mean to  
24 suggest that Armstrong had incurred damages but rather that  
25 Armstrong had incurred the liability for payment of damages to  
26 Plaintiff. If that is what Plaintiff meant in its pleading, then

1 the only indication of the status of any liability for damages  
2 allegedly incurred by Armstrong appears in Plaintiff's pleading at  
3 Paragraph 25,

4 **"The breaches described herein are presently the subject**  
5 **of litigation in the First Action and the Second Action,**  
6 **and have not yet been reduced to judgment."**

7 The references to the First and Second Actions are references to  
8 the Los Angeles Superior Court Actions to which this defendant is  
9 not a party. While it is ambiguous and uncertain from Plaintiff's  
10 pleading where, when, how and how many times Plaintiff considers  
11 that Armstrong breached the Agreement, it does SEEM clear (though  
12 not certain from Plaintiff's pleadings) that plaintiff has no  
13 judgment of any kind and, therefore, no current legal entitlement  
14 to any amount of money from Armstrong. It also SEEMS (though not  
15 certain from plaintiff's pleadings) clear that Plaintiff must  
16 prevail in the Los Angeles breach of agreement lawsuits (or some  
17 similar action in which Plaintiff is awarded a judgment against  
18 Armstrong for breach of the Agreement) in order to have the right  
19 to bring the current action. One might further GUESS...but enough  
20 of guessing. Guessing is a waste of the Court's time as well as  
21 that of this defendant. Neither should have to nor is required to  
22 guess. Plaintiff's pleading is uncertain, ambiguous and  
23 unintelligible and defendant's demurrer should be sustained.

24 III.

25 PLAINTIFF HAS FAILED TO STATE CAUSES OF ACTION  
26 FOR CONSPIRACY AND FRAUDULENT TRANSFERS

27 A complaint must contain a statement of facts, in ordinary and

1 concise language, constituting a cause of action (CCP Section  
2 425.10(a)). A cause of action is the right to secure a redress for  
3 violation of an obligation owing to the plaintiff. (Reynolds v.  
4 Lerman 138 Cal App 586, 292 P2d 559 (1956)).

5 Plaintiff has attempted a classic bootstrap move, not just  
6 trying to pull itself up by its bootstraps but actually trying to  
7 make a quantum legal leap. Plaintiff alleges that in August 1990,  
8 Defendants Armstrong and Walton conspired to and did "hinder, delay  
9 or defraud plaintiff in the collection of its damages" by the  
10 transfer of certain real and personal property from Armstrong to  
11 Walton. In August 1990, plaintiff was not a creditor and does not  
12 plead that in August 1990 the Agreement was breached in any way so  
13 as to incur liability for damages. Armstrong was not a debtor with  
14 respect to Plaintiff. As of September 28, 1993, Armstrong is not  
15 indebted to plaintiff. However, plaintiff claims to have filed  
16 actions in Los Angeles Superior Court which it is currently  
17 litigating against Armstrong in which it claims liquidated damages  
18 for alleged breaches of an Agreement by Armstrong which occurred  
19 commencing in July 1991- one year after the transfers claimed by  
20 plaintiff to be fraudulent. Plaintiff's pleadings indicate that at  
21 the time of the transfers, Armstrong had taken no action which  
22 Plaintiff considered would give rise to a claim for liquidated  
23 damages. Plaintiff was neither a judgment creditor nor did it claim  
24 to be a "creditor" or own a "debt" as defined by the Uniform  
25 Fraudulent Transfer Act Section 3439.01(c)(d) " 'Creditor' means a  
26 person who has a claim,..". " 'Debt' means liability on a claim."

1 It is, in fact, a well recognized principal that the relationship  
2 of a debtor and creditor arises in fraud cases the moment the cause  
3 of action accrues. (Freeman v. LaMorte 148 CA2d 670, 307 P2d 734,  
4 (1957)). According to plaintiff's pleading, at the time of the  
5 transfer and for at least one year thereafter, plaintiff had no  
6 cause of action for damages and was not a creditor.

7 The Uniform Fraudulent Transfer Act Section 3439.04 does  
8 indicate that under certain circumstances, a transfer may be  
9 considered fraudulent as to a creditor even if the creditor's claim  
10 arose after the transfer. However, the formula for applying such a  
11 result is absent in Plaintiff's pleadings.

12 "A transfer made or obligation incurred by a debtor  
13 is fraudulent as to a creditor, whether the creditor's  
14 claim arose before or after the transfer was made or the  
15 obligation was incurred, if the debtor made the transfer  
16 or incurred the obligation as follows:

17 (a) With actual intent to hinder, delay, or defraud  
18 any creditor of the debtor.

19 (b) Without receiving a reasonably equivalent value  
20 in exchange for the transfer or obligation, and the  
21 debtor:

22 (1) Was engaged or was about to engage in a  
23 business or a transaction for which the remaining assets  
24 of the debtor were unreasonably small in relation to the  
25 business or transaction; or

26 (2) Intended to incur, or believed or  
27 reasonably should have believed that he or she would  
28 incur, debts beyond his or her ability to pay as they  
29 became due.

30 As explained above, plaintiff was not a creditor as defined by the  
31 Act at the time of the transfer nor for at least one year afterward  
32 (if at all). There is no allegation that Armstrong was engaged in  
33 a business or transaction relative to Subsection (b)(1) above. Nor  
34 is there any allegation that Armstrong did, in fact, incur debts  
35 beyond his ability to pay or that he did not pay his debts as they

1 became due in the years following the transfer.

2 Plaintiff has not plead sufficient facts to sustain the  
3 requirements to support any of its causes of action. Defendant  
4 requests that his Demurrer be sustained without leave to amend.

5 IV

6 IN THE ALTERNATIVE TO THE DEMURRER,  
7 THE COMPLAINT SHOULD BE STRICKEN

8 Code of Civil Procedure Section 435(b)(1) provides:

9 "Any party, within the time allowed to respond to a  
10 pleading may serve and file a notice of motion to strike  
11 the whole or any part thereof."

12 Code of Civil Procedure Section 436 provides that :

13 "The court may, upon a motion made pursuant to Section 435, or  
14 at any time in its discretion, and upon terms it deems proper:

15 (a) Strike out any irrelevant, false, or improper matter  
16 inserted in any pleading.

17 (b) Strike out all or any part of any pleading not drawn or  
18 filed in conformity with the laws of this state, a court rule,  
19 or an order of the court."

20 This motion to strike is based upon plaintiff's patently false  
21 statements that it is currently entitled to a money judgment; that  
22 plaintiff wrongfully filed this action in contravention of a court  
23 order to refrain from such litigation until an appellate court  
24 decision is announced regarding the validity of the Agreement which  
25 is the basis for all Plaintiff's claims; and that contrary to law  
26 and public policy, plaintiff has attempted to split a cause of  
27 action on a single contract and to circumvent the necessity to  
28 successfully litigate its claims of breach and damage by simply  
29 saying that it is entitled to an award and then going directly  
30 after that award.

31 Specifically, it appears that Plaintiff is attempting to

1 circumvent the Los Angeles Actions and to seek a means to obtain a  
2 money judgment for alleged breaches of an agreement, without  
3 litigating the merits in the court in which the claim has been  
4 brought. Indeed, it is conceivable that Plaintiff, as it has  
5 pleaded its complaint, could be successful in the instant Marin  
6 lawsuit in an amount in the millions of dollars. It could get a  
7 judgment in the Marin action and execute on that judgment. It could  
8 take the real and personal property of defendants Armstrong and  
9 Walton to satisfy the judgment which is prayed to be \$4,800,000. It  
10 could then lose the Los Angeles litigations on which it relies as  
11 the basis for its damages in the Marin Action. The law's  
12 displeasure with such a result is addressed, in part by the rule  
13 against splitting causes of action. The Marin action, in fact, is  
14 a case of splitting a cause of action. Where a claim is founded on  
15 one entire contract, it cannot be divided into distinct demands and  
16 made the subject of separate suits. (Paladini v. Municipal Markets  
17 Co. 185 Cal 672, 200 P 415, (1921)). A party may not split up a  
18 single cause of action and make it the basis of separate suits.  
19 There are two reasons for the rule: (1) the defendant should be  
20 protected against vexatious litigation and (2) it is against public  
21 policy to permit litigants to consume the time of the courts by  
22 relitigating matters already judicially determined, or by asserting  
23 claims which properly should have been settled in some prior  
24 action. (Diachenko v. State 123 Cal App 3rd 932, 177 Cal Rptr 164  
25 (1981)).

26 Although Plaintiff's pleading is somewhat unclear and

1 confusing with respect to the particular reasons why it claims  
2 damages in the amount of \$1,800,000 (plus a prayer for an  
3 additional \$3,000,000 in exemplary damages) in the Marin Action, it  
4 appears that the quantum leap referred to above is plaintiff's  
5 assumption of its successful litigation of the Los Angeles actions.  
6 However, that result is not assured.

7 Defendant Walton hereby requests that this Court take judicial  
8 notice of the Minute Order issued on March 23, 1993 by the Los  
9 Angeles Superior Court in the Case of Church of Scientology  
10 International v. Armstrong, et al. Case #BC 052395. This is one of  
11 the Cases referenced in Plaintiff's pleading. A copy of the Order  
12 is attached hereto as Exhibit "A" and incorporated herein by  
13 reference. The Order indicates that the Court has stayed the  
14 action.

15 "Obviously, the validity of the Agreement is the  
16 basis for the preliminary injunction. One of the basis  
17 for the appeal is an attack on the legality and validity  
18 of the Agreement.

19 The central issue of this case is the legality and  
20 validity of the Agreement. The Court of Appeal could  
21 certainly reach that issue in its determination of the  
22 validity of the injunction. If it does, that ruling could  
23 be determinative of many of the issues of this case. It  
24 makes no sense to proceed with this matter until the  
25 Court of Appeal makes its ruling."

26 Despite the Court's conclusion that it made no sense to  
27 proceed with the matter until the Court of Appeal rules on the  
28 validity of the Agreement which is the foundation of plaintiff's  
29 claims both in the Los Angeles and Marin cases and despite the  
30 Order to stay the Action, plaintiff went to another jurisdiction  
31 and filed another lawsuit apparently relying on the same

1 allegations and the same Agreement which is now being reviewed by  
2 the Court of Appeal.

3 An attendant end run attempt is made by plaintiff with respect  
4 to discovery. Plaintiff has served virtually the same discovery  
5 demand on defendants Armstrong and Walton in the Marin Action as it  
6 did in the Los Angeles Actions. Walton hereby requests this Court  
7 to take judicial notice of the Civil Subpena Duces Tecum and the  
8 Notice to Produce which are attached hereto as Exhibits "B" and "C"  
9 and incorporated herein by this reference. The Court will note the  
10 enormous duplication of request. The Plaintiff, having been ordered  
11 to stay all action in the Los Angeles matters, including further  
12 discovery, has engaged in a bad faith attempt to disregard the  
13 Court's specific direction.

14 Indeed, Plaintiff has shown a total disregard and contempt for  
15 the Honorable Judge Horowitz's Order and has attempted to  
16 circumvent the Order by sneaking into another jurisdiction and to  
17 trick this Court into doing what another Superior Court has refused  
18 to do; i.e., to litigate plaintiff's claims absent the ruling of  
19 the Court of Appeal.

20 Plaintiff has filed this lawsuit simply to harass defendants  
21 and to attempt to avoid the Order of the Court in which it  
22 originally brought its claims regarding the Agreement. Plaintiff's  
23 history and practice of harassing its perceived "enemies", termed  
24 "Fair Game", has been judicially recognized and condemned for at

1 least 17 years.<sup>1</sup> It is apparent that Plaintiff, by the filing of  
2 this lawsuit, has added this defendant to its "enemies" list. This  
3 is no great surprise as Plaintiff has a history of suing and/or  
4 harassing attorneys who have represented claimants against the  
5 Scientology organization, such as Armstrong. Defendant Walton  
6 represented Armstrong in successfully defending an appeal by  
7 Scientology in the first lawsuit in which Scientology attacked  
8 Armstrong in 1982. See Church of Scientology of California v.  
9 Armstrong (1991) 232 Cal.App. 3d 1060, 283 Cal. Rptr. 917.

10 Defendant requests that Plaintiff's pleading be stricken with  
11 prejudice as a sham pleading, filed in bad faith and in  
12 contravention of an existing court order and further that plaintiff  
13 be prohibited from further attempting to employ such vexatious  
14 litigation as against and contrary to public policy.

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15 <sup>1</sup> According to the Fair Game Policy, such persons upon whom it  
16 is imposed,

17 "may be deprived of property or injured by any means by  
18 any Scientologist without any discipline of the  
19 Scientologist. May be tricked, sued or lied to or  
20 destroyed."  
21 (Hart v. Cult Awareness Network (1993) 16 Cal.Rptr 2d 705, 707;  
22 Church of Scientology of California v. Armstrong (1991) 232 Cal.  
23 App. 3d 1060, 283 Cal.Rptr. 917; Wollersheim v. Church of  
24 Scientology (1989) 212 Cal. App. 3d 872, 880, 888-889, 893-894,  
25 pet. for cert. granted, vacated and remanded on other grounds, 111  
26 S.Ct. 1298 (1991); aff'd on remand 4 Cal.App. 4th 1074 (1992);  
27 review granted S011790 (1990) and dismissed (1993); Allard v.  
28 Church of Scientology of California (1976) 58 Cal.App. 3d 439, 443,  
29 fn.1; See also United States v. Kattar (1st Cir.1988) 840 F.2d 118,  
30 125; Van Schaick v. Church of Scientology (U.S.D.C. Mass. 1982) 535  
31 F.Supp. 1125, 1131 n.4; Christoffersen v. Church of Scientology  
32 (1982) 57 Ore.App. 203, 644 P.2d 577, 590-592; Church of  
33 Scientology v. Commissioner of Internal Revenue (1984) 83 T.C. 381,  
34 411-412, aff'd, 823 F.2d 1310 (9th Cir. 1987).

1           WHEREFORE, Defendant prays:  
2           1. That plaintiff take nothing by its complaint;  
3           2. That this demurrer be sustained without leave to amend  
4           3. That the actions demurred to be dismissed;  
5           4. That plaintiff's complaint be stricken with prejudice;  
6           5. For costs of suit incurred herein;  
7           6. For such other and further relief as the court deems  
8 proper.

9           Dated: September 30, 1993  
10

\_\_\_\_\_  
Michael Walton

